(3)

Cf 1007

IN THE HIGH COURT OF CHHATTISGARH
AT: BILASPUR

W.P. No.2059 OF 2003

PETITIONER: Ishwar Pasad Sonwani, aged 39 years, son of Shri P.Sonwani, resident of Shailendra Apartment S-4, second floor, Mandir Chowk, Jarhabhata Bilaspur, tehsil & district Bilaspur (Chhattisgarh).

VERSUS

RESPONDENTS:

1. State of Chhattisgarh, through the Secretary, Law department, Raipur (C.G.),

2. Chhattisgarh Public Service Commission, through the Secretary, office of the C.S.P.S.C. Raipur.

3.Examination Controller, Chhattisgarh Public Service Commission, Raipur (C.G.).

P. R. No. 1920/03
Presented by Shri K.K. Jaiswal
dated 11.12.03

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	01.08.2003 Sri Somnath Verma, counsel for the petitioner. Dr. N.K.Shukla, Additional Advocate General with Shri Sanjay K. Agrawal, Deputy Advocate General for the State/ respondent No.1. Sri Y.C. Sharma, counsel for respondents 2 & 3. By this writ petition under Articles 226 & 227 of the Constitution of India, the petitioner has challenged the decision of respondents 2 & 3 by which they had rejected the petitioner's application and communicated the decision vide letter No. 52/A-7/Recruitment/1796 Raipur, dated 27.06.2003. The main grievance of the petitioner in this petition is that respondent No.2 by an advertisement No.1/2003/Examination dated 02.04.2003 published on 02.04.2003 in Rojgar Aur Niyojan, a weekly news paper had invited applications for recruitment to the post of Civil Judge Class-II and copy of the said news paper is annexed with this petition as Annexure P-1. 2. In this, the eligibility criteria, about the age as mentioned in the advertisement is that as on 1st January, 2004, the candidate should have completed 25 years of age, but the age should not be more than 35 years. If the applicant is Scheduled Caste/Scheduled	

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	Tribe/OBC then the prescribed age limit will be 40 years. This advertisement of respondent No.2 is contrary to the rules framed in the year 1994. The petitioner who is a Lecturer in English employed in the State service and posted at Govt. Higher Secondary School, Budhikhar, Tehsil: Masturi, Distt. Bilaspur. His date of birth is 26.09.1963 and he belongs to Scheduled Caste category. He has prepared thoroughly and hopes for his sure success. Respondent No.2 issued another advertisement for other administrative posts vide advertisement No.4/2003. In this advertisement, respondent No.2 has given exemption of two years to those persons who are holders of a Green Card under the Family Welfare Scheme. Thus, the respondents have adopted double policy for different posts and the respondents are discriminating in the State service which is against the Constitution of India. The petitioner has fundamental right to get equal opportunity in the matter of employment. It ought to be equal age limit for all public employment. Thus, no citizen shall only on the ground of place of birth, residence is ineligible for or discriminated against in respect of, and any employment or any offices under the State. The petitioner applied for the post of Civil Judge, Class-II after fulfilling all formalities and submitted the application within the	

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stipulated period and time with prescribed fees. The petitioner received the communication of rejection of application form on 07.07.2003 by post vide letter No.52/A-7/Recruitment/1796 Raipur, dated 27.06.2003 sent by respondents 2 & 3. Respondents 2 & 3 have rejected the application form of the petitioner on the ground that petitioner's age as on 01.01.2004 will be more than the prescribed ~~highest~~ age limit. Immediately, after receiving the letter (Annexure P-3), the petitioner had sent his objection on 07.07.2003, but the said representation is not being considered. Therefore, the petitioner has filed this writ petition.

3. The respondents have no right to over ride the provision of Sub-Rule (b) of Rule 7 of the Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994. The respondents ought to have computed the age of the petitioner according to the said Service Rules. The age of the petitioner must have been computed as on the first day of January of the current year in which applications for appointment are invited. It is submitted that the application for appointment was invited on 02.04.2003. Hence, the age of the petitioner must have been computed as on 01.01.2003. On this date the petitioner's age was below 40 years i.e. 39 years 3 months. It is

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therefore, prayed that the respondents may be directed to allow the petitioner to appear in the examination for recruitment of the post of Civil Judge, Class-II and they may be further directed to withdraw the order of rejection and application Annexure P-3.

4. The return has been filed on behalf of respondent No.1, in which it is mentioned that as per Rule 7 (b) the age to be counted as on 1st day of January of the year, in which the appointment is to be made. It is not the 1st day of January of the year in which the applications are invited but actually the relevant date is the year of appointment not the year of inviting the applications. Since the appointment is to be effected in the year 2004, therefore, cut off date has been fixed as 1st January 2004. Based on this principle, Madhya Pradesh Public Service Commission had issued advertisement in the year 2001 making a cut off date for eligibility as on 1st January 2002. It is very clear from the rule that the candidate must be between 25 to 35 years of age in case of General category; 40 years of age in case of reserved category on 1st January of the year in which he is to be appointed. Since the appointment on the basis of the application is to be effected in the year 2004, therefore the cut off date is 1st January 2004 as the Rules does not contain any exemption

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for the holders of Green Card. No exemption of two years age can be granted. Thus the validity of the rule on the ground of inequality cannot be challenged, therefore, the writ petition be dismissed.

5. A similar reply has also been filed on behalf of respondents 2 & 3.

6. I have heard the learned counsel for the parties.

7. Learned counsel for the petitioner argued that as per Sub-Rule (b) of Rule 7 of Madhya Pradesh Lower Judicial Service (Recruitment & Conditions of Service) Rules, 1994, the applicant's age must be counted from 1st January of the year in which the applications for the appointment are invited. According to this Rule as on 1st January 2003, the petitioner being a Scheduled Caste candidate was entitled up to the age limit of 40 years as prescribed in the advertisement as he had completed 39 years 3 months of age. Therefore, he was within the prescribed age limit and his application has been rejected wrongly.

8. On the other hand, learned Additional Advocate General appearing on behalf of the State/respondent No.1 and learned counsel appearing on behalf of respondents 2 & 3 submitted that the advertisement clearly states that the age will be applicable as on 1st January, 2004, because the appointments are to be made in the year

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2004 and this has been consistent practice is past also. The M.P. Public Service Commission had always adopted this practice only being the intention behind the rule. The Hindi version of these rules which is the main rule and which get the precedence over the English version and the learned counsel appearing on behalf of the respondents laid emphasis on the Hindi version of the rules. Sub-Rule "ख" of Rule 7 lays down thus:-

> (ख) उसने उस वर्ष की, जिसमें नियुक्ति के लिए आवेदन आमंत्रित किए गए हैं पहली जनवरी को 25 वर्ष की आयु पूरी नहीं कर ली हो और 35 वर्ष की आयु से कम का नहीं है

9. This Hindi version of rule prescribes that the candidate should have completed the age of 25 years of age and must not have crossed the age of 35 years on the 1st day of January of the year in which the appointment is to be made.

10. Having heard the learned counsel for the parties and having gone through the relevant rules, it is true that there is a little bit confusion between the English version and Hindi version of rules, because the English version says that the age will be counted as on 1st day of January of the year in which the applications are invited for,

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appointment, whereas the Hindi version of the rules lays down that the age will be counted as on the 1st day of January of the year in which the appointments are to be made. Looking to this Hindi version of these rules and the advertisement for the post of Civil Judge, Class-II was issued by the respondents 2 & 3 in which it has been mentioned that the relevant date for counting of the age limit will be 1st January, 2004. More over, this practice has been consistently being adopted by M.P. Public Service Commission. In view of the above, since the Public Service Commission has categorically issued a notification laying down the condition that the age will be counted as on 1st January, 2004 in consonance with the spirit of the Hindi version of the Rules.

11. Therefore, I am of the opinion that there is no force in the contention of the learned counsel for the petitioner and on this ground the petitioner's petition has no merit. As far as the question of granting two years age relaxation for Green Card holders, since there is no provision in the rules for giving such relaxation whereas, in other service rules such provision is existing and these rules were framed under Article 234 of the Constitution of India, I do not find

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	any discrimination in this regard and on this count also the petition of the petitioner does not survive. 12. In the result, the petition is dismissed. 13. In view of the above order, M.(W).P.No.1865/2003 and I.A.No.6221/2003 stands disposed of. Sd/- L.C. Bhadoo Judge gowri	

Date 2-8-07 17/8/07

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